In the High Court of Punjab and Haryana, Chandigarh.

R.S.A. No.3432 of 2007

Date of Decision: 13.11.2007

Avinash Sharma

…Appellant

Versus

Chander Parkash

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Mohit Garg and Mr. Pankaj Mehta, Advocates
for the appellant.

Mr. Harkesh Manuja, Advocate
for the caveator/respondent.

RAJESH BINDAL, J.

The appellant/plaintiff is before this Court against the concurrent finding of fact by both the Courts below. In the suit filed by the appellants the claim was for declaration to the effect that he had become owner in possession of the house on account of adverse possession. In terms of judgment of this Court in ***Bhim Singh and other v. Zile Singh and others 2006(3) R.C.R. (Civil) 97*** plea of adverse possession does not give a cause of action to file a suit for declaration claiming ownership thereof as the same can only be raised as defence in a suit for possession filed by other party. Once the suit itself was not maintainable no question of law arises in the appeal.

The same is dismissed.

Learned counsel for the caveator/respondent very fairly states that he has no objection to the grant of relief to the appellant/plaintiff on account of mesne profits as he foregoes this claim made by the respondent/defendant in the cross-objections, which have ultimately been decided by the learned Courts below in his favour. Accordingly, in terms of the statement of counsel for the caveator/respondent, decree of the learned lower Court below to the extent of relief of mesne profit is set aside.

At this stage, learned counsel for the appellant states that he may be given some time to vacate the house. This was put to learned counsel for the caveator/respondent who has no objection to the grant of reasonable time to the appellant for handing over vacant possession of the house to the respondent/caveator. On undertaking, to be filed before the learned trial Court, to hand over the vacant physical possession of the house in dispute to the respondent on or before May 31, 2008, the appellant shall be permitted to retain the possession of the house. However, it is made clear that in case of failure of the appellant to hand over vacant physical possession of the house to the respondent, he shall be entitled to initiate appropriate proceedings against him including contempt.

(Rajesh Bindal)
Judge

November 13, 2007
"DK"